ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES MIXON,

                    Petitioner,

         -v-   No. 02 Civ. 840 (LTS)(DF)
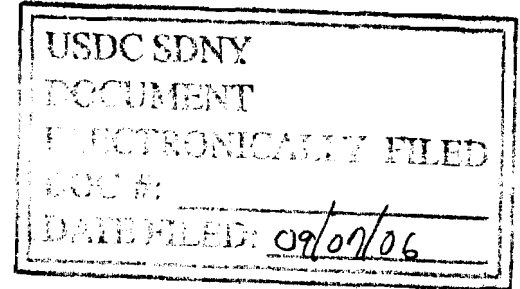
DANIEL A. SENKOWSKI,

                    Respondent.

LAURA TAYLOR SWAIN, UNITED STATES DISTRICT JUDGE

ORDER ADOPTING REPORT & RECOMMENDATION

The Court has reviewed Magistrate Judge Freeman's June 21, 2006, Report and

Recommendation (the "Report"), which recommends that petitioner James Mixon's petition for

writ of habeas corpus, pursuant to 28 U.S.C. § 2254, be denied. No objections to the Report

have been received.

In reviewing a report and recommendation, a district court "may accept, reject, or

modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28

U.S.C.A. § 636(b)(1)(C) (West 2006). "To accept the report and recommendation of a

magistrate, to which no timely objection has been made, a district court need only satisfy itself

that there is no clear error on the face of the record." Nelson v. Smith, 618 F. Supp. 1186, 1189
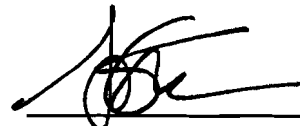
(S.D.N.Y. 1985) (citations omitted).

The Court has reviewed carefully Judge Freeman's thorough Report and

Recommendation and finds no clear error. The Court therefore adopts the Report for the reasons

stated therein. Accordingly, the petition is denied.

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Copies mailed Petitioner, AG +
Chambers of Judge Swain
                                        MJ
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The Court also adopts Judge Freeman's conclusion that because, petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability should not be issued. See 28 U.S.C. § 2253; Middleton v. Attorneys General of States of N.Y. & Pa. 396 F.3d 207, 209 (2d Cir. 2005) (per curiam). The Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438, 444 (1962).

IT IS SO ORDERED.

Dated: New York, New York
        September 5, 2006

LAURA TAYLOR SWAIN
United States District Judge